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STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION  
DOCKET NO. 2009-226-E

CDW  
Filed by *led*  
Filed *SA.*  
Date *1/8/10*  
Time *4:35*

IN THE MATTER OF: )  
 )  
Duke Energy Carolinas, LLC Application ) **PROPOSED ORDER**  
for Authority to Adjust and Increase the ) **RESPECTFULLY SUBMITTED BY**  
Company's Electric Rates and Charges ) **THE SOUTH CAROLINA GREEN PARTY**

FINDINGS OF FACT

1. That on July 27, 2009, Duke Energy Carolinas, LLC ("Duke") filed an application with the Commission requesting authority to adjust and increase it's retail electric rates, charges, and tariffs and to approve the proposed mechanism to compensate the Company for the energy efficiency programs approved in Order No. 2009-336. The Application was filed pursuant to S.C. Code Ann. Sections 58-27-820 and 58-27-870 (Supp. 2008) and 26 S.C. Code Ann. Regs. 103-303 and 03-823 (Supp. 2008).
2. That hearings were held before the Public Service Commission, which duly considered all of the pleadings, and written pre-filed and oral testimony as supplemented by the

parties, including with regard to the settlement agreement among Duke and all intervenors except the South Carolina Green Party.

3. The current economic environment has placed strain on the public.

4. If the Public Service Commission were to deny Duke's application this year in the interest of temporarily reducing the strain on the public, then there would be no change in Duke's proposed capital outlays in South Carolina.

5. If the Public Service Commission were to deny Duke's application this year in the interest of temporarily reducing the strain on the public, then there would be no change in Duke's cost of capital or adverse effect upon its ability to retire debt and fund its proposed capital outlays.

6. If the Public Service Commission were to deny Duke's application this year in the interest of temporarily reducing the strain on the public there would be no degradation of Duke's financial integrity or ability to attract necessary capital or unfairly compensate Duke's investors.

#### CONCLUSIONS OF LAW

1. Every rate made, demanded or received by any electrical utility or by any two or more electrical utilities jointly shall be just and reasonable. SC Code § 58-27-810.

2. The determination of just and reasonableness is measured in balance considering both the regulated utility **and the existing and foreseeable needs of the public**. "... the court must determine whether the order may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensative investors for the risks they have assumed, **and yet provide appropriate protection to the relevant public interests, both existing and**

foreseeable.”( emphasis added) Permian Basin Area Rate Cases, 390 U.S. 747, 88 S.Ct.1344, 20L.Ed. 2d 148 (1968).

3. There is precedent that courts and Commissions reduce the rate of return to investors in periods of economic depression. See e.g. Welch, Cases on Pub. Util. Reg (1946) at page 433:

Indications that the courts and Commissions were giving weight to the existence of a period of economic depression in diminishing the allowable rate of return continued during the depression year 1932 through 1935. Probably the lowest rate ever passed upon with approval by a Federal district court in the absence of extenuating circumstances occurred in Kankakee Water Co. v. Gilbert, P.U.R. 1933B, 145, in which the court held that water rates fixed by the Illinois Commission, calculated to yield only 5.15 per cent, were not "so obviously confiscatory as to warrant granting of a motion for a temporary injunction in view of the abnormal conditions resulting from a generally depressed industrial and financial period." A few weeks earlier, a Federal district court in Indianapolis Water Co. v. McCardle, P.U.B.1933B, 222, refused to restrain rates calculated to yield a 6 per cent return.

4. The Public Service Commission recognizes "..., in the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions." Gulf Coast Electric Cooperative Inc. v. Johnson, 727 So.2d 259 (Fla.1999) "The Public Service Commission was created by the Legislature for the purpose of exercising regulatory authority over public utilities. Its function is to require such entities to perform in a manner designed to safeguard the interests of the public and the utilities. Its primary purpose is to serve the interests of the public." City of South Charleston v. The West Virginia Public Serv. Commission, 204 W.Va. 566, 514 S.E.2d 622 (1999). "We note that the PSC's paramount consideration must be public interest." US West Communications, v. The Wyoming Public Service Commission, 907 P.2d 343 ( Wyo.1995)

5. It is in the public interest for the Public Service Commission to deny Duke's application this year in which the public is suffering economic strain in the interest of temporarily reducing the strain on the public and that in so doing there is as a result of the

temporary denial no degradation of Duke's financial integrity or Dukes ability to attract necessary capital or unfair compensation to Duke's investors at at a time lower rates of return are appropriate.

6. Duke's application filed July 27, 2009 is hereby DENIED.

IT IS SO ORDERED BY THE PUBLIC SERVICE COMMISSION